THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.7455 & 8054 of 2003 & 17948 of 2007

COMMON ORDER: DATE: 29-10-2007

W.P.No.7455 of 2003

M/s Sri Venkata Balaji Jute Mills Pvt. Ltd ….
Rep. By its M.D. Sri G.Ch.Venkata Raju
Amadalavalasa, Srikakulam Dist. .. Petitioner

And

1. Govt. of A.P. rep. By its
Prl. Secrtary, Revenue (CT-II)
A.P. Secretariat, Hyderabad
And 3 others .. Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.7455 & 8054 of 2003 & 17948 of 2007

COMMON ORDER: (per **THE HON'BLE SRI JUSTICE BILAL NAZKI**)

Heard the learned counsel for the petitioners and Sri K.Raji Reddy, Learned Special Standing Counsel for the Commercial Taxes.

The questions fell for consideration in these three writ petitions are same and are being disposed by this common order. The Government passed G.O.Ms.No.564 dated 10.8.2000 laying down there, where in respect of sale or purchase inside the State, of jute, tax has been levied and collected under the A.P. General Sales Tax Act and such jute is used in manufacture of jute products namely hessain cloth, sacking cloth, gunnies, the amount of tax paid on such quantity of jute under the Local Act, shall be reduced from the tax payable under the Central Sales Tax Act in respect of inter-state sales of jute products. A further G.O. was passed being G.O.Ms.No.774 dated 2.11.2000 extending the benefits granted under G.O.Ms.No.564 to the jute twine also. Thereafter, the 3rd G.O.Ms.No.63 dated 18.1.203 came, which is the subject matter of these writ petitions. This notification reads as :

"In exercise of the powers conferred by sub-section (5) of Section 8 of Central Sales Tax Act, 1956 (Central Act No.74 of 1956) the Governor of Andhra Pradesh hereby rescinds the orders issued in G.O.Ms.No.774, Revenue Department dt. 2.11.2000"

This notification is deemed to have come into force with effect from 11.3.2002. The petitioner has no grievance against the first part of the G.O. But was aggrieved of the second part whereunder the G.O. passed on 18.1.2003 gives to it retrospective effect from 11.3.2002.

The learned counsel for the petitioners submit that because of this notification the concession granted under G.O.Ms.No.774 dated 2.11.2000 to jute twine has been withdrawn retrospectively which cannot be done in a taxing statute, particularly in case of indirect taxes. If the petitioners have not collected taxes in accordance with the earlier G.Os, they could not be now forced to pay such taxes. Had they collected the tax, that would have been in contravention of G.O.Ms.No.774 dated 2.11.2000 and the petitioners would have been exposed themselves to various civil and criminal consequences. The learned counsel submit that whether a beneficial taxing government order can be withdrawn or not is a question which has already been decided by this Court and there are three Division Bench judgments of this Court in **The Yemmiganur Spinning Mills Ltd v. State of A.P.**[1], **B.P.L. Ltd v. State of A.P.**[2], **Simplex Concrete Piles (India) Ltd v. Commercial Tax Officer, Kakinada**[3]**.** The Learned Government Pleader for Taxes has also not disputed that the question has been decided by the earlier judgments of this Court.

Therefore, these writ petitions have to be allowed and the impugned notification to the extent it makes its operation retrospectively is quashed. In respect of two of the writ petitions (W.P.Nos.7455 & 8054 of 2003), the learned Government Pleader has taken an objection that it is only at the show cause notice that the writ petitions have been filed and therefore the writ petitions are not maintainable. Since the show cause notice has been issued on the

impugned notification and we have quashed the notification, the consequential orders pursuant to the impugned notification stand set aside. The other Writ Petition No.17948 of 2007 has been filed after the petitioner suffered the order in suo-motu revision based on the impugned G.O.Ms.No.63 dated 18.1.2003. Therefore, the order passed by the authority in terms of the said G.O. is also set aside.

The writ petitions are accordingly allowed. No order as to costs.

_____

BILAL NAZKI,J

Date:29-10-2007

_____

RAMESH RANGANATHAN,J

---

[1] 37 STC 314
[2] 96 STC 119
[3] 143 STC 81